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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/818,246 | 03/27/2001 | Kirkland W. Vogt | 5216 | 1581 |

7590 06/20/2002
Milliken & Company
P.O. Box 1927
Spartanburg, SC 29304

EXAMINER

COLE, ELIZABETH M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1771

DATE MAILED: 06/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/818,246

Applicant(s)

VOGT, KIRKLAND W.

Examiner

Elizabeth M Cole

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1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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4. Claims 17, 19-20, 21-22, 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogt et al, U.S. Patent No. 6,40,393. Vogt et al discloses a fabric/elastomer composite comprising a textile fabric that has been coated with an elastomer composition wherein the composition comprises a water-borne polymeric latex, an acid-generating chemical and a cloud point surfactant. The composition may be distributed throughout the fabric. See abstract. The fabric may be woven, knitted or nonwoven and may comprise the claimed fiber blends. See col. 5, lines 12-23. The fabric/elastomer composite may be made by the method of applying the elastomer composition to the textile fabric and heating the composition. The composition may be applied by spraying, dipping and other known methods. See col. 5, lines 24-67.
5. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Vogt, U.S. Patent No. 5,916,636. Vogt discloses an elastomer coated textile fabric which may be used as upholstery in automobile interiors. Vehicle interiors commonly reach temperatures of greater than 280 degrees F, (see for example, Burrus, IV et al, U.S. Patent No. 6,345,767 at col. 1, lines 19-22). Therefore, the elastomer coated fabric of Vogt is exposed to temperatures of greater than 130 degrees C.
6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt et al, U.S. Patent No. 6,040,393 in view of Spek et al, U.S. Patent No. 4,886,702. Vogt et al discloses a fabric/elastomer composite comprising a textile fabric that has been coated with an elastomer composition wherein the composition comprises a water-borne polymeric latex, an acid-generating chemical and a cloud point surfactant. The composition may be distributed throughout the fabric. See abstract. The fabric may be woven, knitted or nonwoven and may comprise the claimed fiber blends. See col. 5, lines 12-23. The fabric/elastomer composite may be made by the method of applying the elastomer composition to the textile fabric and heating the composition. The composition may be applied by spraying, dipping and other known methods. See col. 5, lines 24-67. Vogt et al differs from the claimed invention because Vogt et al does not disclose the claimed uses of the fabric. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, since the Vogt et al textile composite is capable of performing the intended uses, it meets the claim. Vogt et al also differs from the claimed invention because Vogt et al does not teach employing an acrylic latex but instead employs a polyurethane latex. Spek et al teaches that both polyurethane and acrylic latex compositions may be used as textile coating materials wherein the

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latex coagulates at elevated temperature. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed an acrylic polymer instead of a polyurethane polymer as the polymer latex in Vogt et al. One of ordinary skill in the art at the time the invention was made would have been motivated to employ an acrylic polymer instead of a polyurethane polymer because both acrylic polymers and polyurethane polymers are known to be useful as elastomeric coatings for textiles as taught by Spek et al and also because both are known to be heat coagulable.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c
June 12, 2002